IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 88 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A.E.C.

Versus

CHUTHAJI CHELAJI THAKORE

Appearance:

1. Appeal from Order No. 88 of 2004

MR KB PUJARA for Petitioner.

MR BK DAMANI for Respondent.

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 08/04/2004

ORAL JUDGEMENT

1. Admit, service of which is waived by Mr.B.K.Damani, learned Advocate appearing for the respondent.

2. This Appeal From Order is filed against the order

passed by the learned City Civil Judge below Applications Exhs.6, 7 and 19 in Civil Suit no.881 of 2003 whereby the appellant-Company-original defendant is directed to gtive the bill according to BHP tariff to the original plaintiff-present respondent within 10 days from the date of receipt of the order. The present respondent was also directed to pay the bill on receipt of the bill from the present appellant, and on such payment, the present appellant to restore the supply of electricity to the service of the original plaintiff-present respondent.

3. Heard Mr. K.B.Pujara, learned Advocate appearing for the present appellant. He has submitted that the conditions precedent for granting BHP tariff were not fulfilled as the proper application was not filed nor 7/12 form was produced. The outstanding arrears were also not paid by the present respondent, and hence, electricity connection was disconnected by the appellant-Company. Without going into this aspect of the matter, the trial Court has straight-away issued directions to issue bill on the basis of BHP tariff which was not justified, and hence, the order passed by the trial Court was required to be set aside.

4. Mr. B.K.Shah, learned Advocate appearing for Mr. B.K.Damani for the present respondent submitted that application has already been made and 7/12 form was also produced. He has also submitted that the fact regarding theft of electricity was not mentioned in the reply filed by the appellant to the first Notice of Motion and this fact was pointed out for the first time in the reply to the second Notice of Motion. The defendant has not received any demand notice so far as the bill regarding theft of energy is concerned. The respondent submitted that the Government has issued specific directions to the Electricity Companies in the State to issue the bill on the basis of BHP tariff for agricultural consumption and there is no justification on the part of the appellant-Company to deny this benefit to the respondent. He has, therefore, submitted that the order passed by the trial Court does not require any interference by this Court.

5. After having heard the learned Advocates appearing for the parties and after going through the documents placed on the record as well as the pleadings made, this Court is of the prima facie view that the issues raised before the Court require investigation of facts and leading of the evidence as to when the application was made, whether the documentary evidence in support of the claim of the original plaintiff was

produced before the Court, whether the alleged theft has been committed and any bill with regard to theft was received by the plaintiff, and whether the appellant-Company has received any subsidy on account of BHP tariff. All these questions can be looked into by the Court at the time of deciding the suit or at the time of trial. As such in absence of necessary details and evidence, it is not proper and desirable for the Court to express any opinion. At the same time blanket direction issued by the trial Court also not justified looking to the facts and circumstances, and hence, in the interest of justice and also looking to the fact that the respondents agricultural operations may not suffer for want of electricity, the Court is inclined to direct the respondent to deposit a sum of Rs.60,000/- in three equal monthly installments of Rs.20,000/-each with the appellant-Company and on deposit of the first instalment, the appellant-Electricity Company is directed to supply the electricity connection to the present respondent and all future bills may be issued by the appellant-Company to the respondent on the basis of BHP tariff, subject to furnishing of necessary evidence in the form of 7/12 forms agricultural operations showing that they are being carried out by the present respondent, and also subject to the condition that the present respondent would move an application before the trial Court for adding the State of Gujarat as a party defendant in the suit. The payment which is ordered to be made herein is subject to the final outcome of the suit as well as subject to the subsidy which is to be received by the appellant-Company from the State Government on account of issuance of bills on the basis of BHP tariff. It is made clear that this order is passed without prejudice to the rights and contentions of the parties and the present respondent will file an undertaking before the trial Court to the effect that the respondent will pay the differential amount of arrears as well as of the prices to be raised hereinafter on the basis of the BHP tariffpursuant to the direction of the Court, in case the appellant-Company would not get the subsidy from the State Government or the present respondent will fail in the suit which is pending before the trial Court.

With the above observations and directions, this Appeal From Order is partly allowed to the aforesaid extent.

(K.A.Puj,J.)
stanley-kap.

Civil Application no.2049 of 2004

In view of the order passed in Appeal From Order no.88 of 2004, no orders.

(K.A.Puj,J.)

stanley-kap.